



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MGE/173327

PRELIMINARY RECITALS

Pursuant to a petition filed April 01, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a hearing was held on April 28, 2016, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to the denial of a November 2015 Medicaid application and whether a February 2016 Medicaid application was correctly denied because Petitioner did not meet a residency requirement.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner applied for Medicaid in November 2015. That application was denied because the agency determined that Petitioner was not a citizen or qualifying alien. A denial notice was sent to Petitioner dated November 20, 2015 at the above address and it notes an appeal deadline of January 5, 2016.
3. Petitioner reapplied for Medicaid in February 2016. That application was denied, again as the agency concluded that Petitioner was not a citizen or qualifying alien. A February 22, 2016 denial notice notes an appeal deadline of April 8, 2016.

4. Petitioner filed this appeal on April 1, 2016.
5. Petitioner entered the United States on January 15, 2002, was divorced in Florida in June 2006 and has been at the same address, the above address, since at least September 2007.
6. Petitioner was issued a permanent resident card indicating she had been a resident since November 4, 2014 with a category of Z14 - Cancellation of removal. Alien granted suspension of deportation or cancellation of removal pursuant to VAWA provisions; Violence Against Women Act (VAWA), Crime Bill, PL 103-322.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. §49.45(5)(a), *Wis. Stats.* Here it is apparent that the hearing was requested after the January 5, 2016 appeal filing deadline for the denial of the November 2015 Medicaid application. Thus the appeal is untimely as to that issue. It is, however, timely as to the denial of the February 2016 application and the Division of Hearings and Appeals without authority to act.

Petitioner seeks Medicaid under the following provisions of the *Medicaid Eligibility Handbook (MEH)*:

7.3.1 Immigrants Introduction

Immigrants are persons who reside in the U.S., but are not U.S. citizens or nationals. The immigrants described below, who apply for Medicaid and meet all eligibility requirements, are entitled to receive Medicaid benefits.

...

10. An immigrant who has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.

...

MEH, §7.3.1.

An immigrant lawfully residing in the United States who is considered to be a battered individual whose deportation has been withheld is eligible to receive Medicaid if the individual meets certain criteria:

...

- a. Lawfully residing in Wisconsin and an honorably discharged veteran of the U.S. Armed Forces, or
- b. Lawfully residing in Wisconsin and on active duty (other than active duty for training) in the U.S. Armed Forces, or
- c. Lawfully residing in Wisconsin and the spouse, unmarried dependent child, or surviving spouse of a person described in "a" or "b" or
- d. An Amerasian, or
- e. Resided in the U.S. for at least five years since his or her date of entry.

...

Medicaid Eligibility Handbook (MEH), §7.3.1.1.

The issue here is the meaning of the term 'date of entry'. It does not seem to be defined in the MEH.

Petitioner argues that her date of entry is her date of admission into the United States; i.e., the date on her visa. She notes that she has lived in the US since. The agency argues that it is the date that she obtained legal status and that was November 2014 and there is a 5 year residency requirement. Neither side presented any detailed legal argument in support of their position.

As Medicaid is a federal program I note the following Federal laws.

Under 42 CFR §435.406(a)(2), “The [state] agency must provide Medicaid to otherwise eligible residents of the United States who are – qualified aliens as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641)(including qualified aliens subject to the 5-year bar) who have provided satisfactory documentary evidence of Qualified Alien status...”

8 U.S.C. §1641(c) includes a battered individual as a “qualified alien”:

(c) Treatment of certain battered aliens as qualified aliens

For purposes of this chapter, the term “qualified alien” includes—

(1) an alien who—

(A) has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent’s family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) has been approved or has a petition pending which sets forth a prima facie case for—
(i) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1154(a)(1)(A)(ii), (iii), (iv)],

(ii) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. 1154(a)(1)(B)(ii), (iii)],

(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).^[2]

(iv) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. 1154(a)(1)(B)(i)]; ^[3]

(v) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)];

Under 8 U.S.C. §1613(a), a qualified alien, “...is not eligible for any Federal means-tested public benefits for a period of 5 years, beginning on the date of the alien’s entry into the United States with a status within the meaning of the term ‘qualified alien’.” Thus, the five-year clock begins to run on the date the alien/immigrant is both in the United States and has obtained qualified alien status. This would be the November 2014 date.

Based on the above I am concluding that Petitioner’s February 2016 Medicaid application was correctly denied.

This case is complicated and I respectfully remind Petitioner that her attorney is certainly free to note the rehearing instructions below.

CONCLUSIONS OF LAW

- 1) That Petitioner’s appeal is not timely as to a November 2015 denial of a November 2015 Medicaid application.
- 2) That Petitioner’s appeal is timely as to a denial of a February 2016 denial of an application for Medicaid.
- 3) That Petitioner’s February 2016 Medicaid application was correctly denied on the grounds that she had not been a United States resident for 5 years.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of June, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 27, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability
[REDACTED]